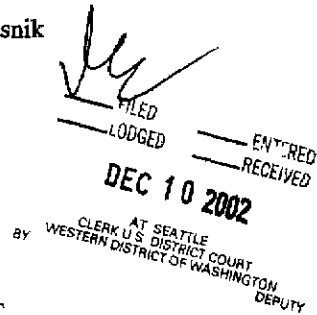


Judge Lasnik



CR 02-00415 #00000008

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES N. WUENSCHÉ,

Defendant.

NO. CR02-415L

PLEA AGREEMENT

Come now the United States of America, by and through John McKay,
United States Attorney, and Jeffrey B. Coopersmith, Assistant United States Attorney for
the Western District of Washington, and the defendant, JAMES N. WUENSCHÉ, and his
attorneys, Jeffrey S. Jacobovitz and Ellen Bass, and enter into the following Agreement,
pursuant to Federal Rule of Criminal Procedure 11(e).

1. Waiver of Indictment. Defendant, having been advised of the right to be
charged by Indictment, agrees to waive that right and enter a plea of guilty to the charge
brought by the United States Attorney in an Information.

2. The Charges. Defendant, having been advised of the right to have this
matter tried before a jury, agrees to waive that right and enter a plea of guilty to the
following charge contained in the one-count Information: Conspiracy to Commit
Securities Fraud, Wire Fraud, Mail Fraud, and Money Laundering, in violation of
Title 18, United States Code, Section 371. By entering this plea of guilty, Defendant
hereby waives all objections to the form of the charging document.

PLEA AGREEMENT
(U S v James N Wuensche, No CR02-415L) - 1

UNITED STATES ATTORNEY
601 UNION STREET, SUITE 5100
SEATTLE, WASHINGTON 98101-3903
(206) 553-7970

1 3. The Penalties. Defendant understands that the maximum statutory penalties
2 for the charge contained in the Information are as follows: imprisonment for up to five
3 (5) years, a fine of up to two hundred fifty thousand dollars (\$250,000), a period of
4 supervision following release from prison of between two (2) and three (3) years, and a
5 one hundred dollar (\$100) penalty assessment. The Court may also impose an alternative
6 fine based on gain or loss equal to twice the gross gain or twice the gross loss. Defendant
7 further understands and agrees that he will be required to pay the penalty assessment of
8 one hundred dollars (\$100) at or before the time of sentencing.

9 Subject to Paragraph 8 of this Plea Agreement, Defendant agrees that any
10 monetary penalty the Court imposes, including the special assessment, fine, costs and/or
11 restitution, is due and payable immediately, and further agrees to submit a completed
12 Financial Statement of Debtor form as requested by the United States Attorney's Office.

13 Defendant understands that supervised release is a period of time following
14 imprisonment during which he will be subject to certain restrictions and requirements.
15 Defendant further understands that if supervised release is imposed and he violates one or
16 more of its conditions, he could be returned to prison for all or part of the term of
17 supervised release that was originally imposed. This could result in Defendant serving a
18 total term of imprisonment greater than the statutory maximum stated above.

19 4. Rights Waived by Pleading Guilty. Defendant understands that, by
20 pleading guilty, he knowingly and voluntarily waives the following rights:

21 a. The right to plead not guilty, and to persist in a plea of not guilty;

22 b. The right to a speedy and public trial before a jury of Defendant's
23 peers;

24 c. The right to the effective assistance of counsel at trial, including, if
25 Defendant could not afford an attorney, the right to have the Court appoint one for
26 Defendant;

27 d. The right to be presumed innocent until guilt has been established at
28 trial, beyond a reasonable doubt;

1 e. The right to confront and cross-examine witnesses against
2 Defendant;
3 f. The right to compel or subpoena witnesses to appear on Defendant's
4 behalf;
5 g. The right to testify or to remain silent at trial, at which trial such
6 silence could not be used against Defendant; and
7 h. The right to appeal a finding of guilt or any pretrial rulings.
8 5. Applicability of Sentencing Guidelines. Defendant understands and
9 acknowledges the following:
10 a. The United States Sentencing Guidelines, promulgated by the
11 United States Sentencing Commission, are applicable to this case;
12 b. The Court will determine Defendant's applicable Sentencing
13 Guidelines range at the time of sentencing;
14 c. The Court may impose any sentence authorized by law, including a
15 sentence that, under some circumstances, departs from any applicable Sentencing
16 Guidelines range up to the maximum term authorized by law;
17 d. The Court is not bound by any recommendation regarding the
18 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
19 range offered by the parties, or by the United States Probation Department; and
20 e. Defendant may not withdraw a guilty plea solely because of the
21 sentence imposed by the Court.
22 6. Ultimate Sentence. Defendant acknowledges that no one has promised or
23 guaranteed what sentence the Court will impose.
24 7. Elements of the Offense.
25 a. The elements of the offense of Conspiracy to Commit Securities
26 Fraud, Wire Fraud, Mail Fraud, and Money Laundering, as charged in the Information, in
27 violation of Title 18, United States Code, Section 371, are as follows: (1) there was an
28 agreement between Defendant and at least one other person to commit securities fraud,

1 | wire fraud, mail fraud, or money laundering, or at least one of these offenses;
2 | (2) Defendant became a member of the conspiracy knowing of at least one of its objects
3 | and intending to help accomplish such object or objects; and (3) one of the members of
4 | the conspiracy performed at least one overt act for the purpose of carrying out the
5 | conspiracy.

6 | 8. Restitution. Defendant shall make restitution in the amount determined by
7 | the Court at sentencing. The government agrees that the appropriate restitution amount in
8 | this case should not exceed seven hundred fifty thousand dollars (\$750,000.00).
9 | Defendant shall receive credit for any amounts already paid or collected. The total
10 | restitution amount shall be due and payable immediately upon sentencing, and shall be
11 | paid in accordance with a schedule of payments as set by the United States Probation
12 | Office and ordered by the Court. Defendant's restitution obligation shall be joint and
13 | several with any other individuals who are charged and convicted of having been
14 | involved in the same conspiracy and scheme to defraud.

15 | 9. Loss Amount. The United States and Defendant agree that the correct
16 | amount of loss for purposes of applying U.S.S.G. §2B1.1(b)(1) (Nov. 2001) is greater
17 | than four hundred thousand dollars (\$400,000.00) but no more than one million dollars
18 | (\$1,000,000.00).

19 | 10. Forfeiture. Defendant agrees to forfeit to the United States immediately all
20 | of his right, title and interest in any property, real or personal, constituting, or derived
21 | from, any proceeds traceable to conspiracy to commit securities fraud, wire fraud, and
22 | mail fraud, that are subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) and
23 | 28 U.S.C. § 2461(c), including the following assets:

24 | Proceeds received by Alliance Advisory Group, Inc., in the amount of
25 | \$155,000.00.

26 | Defendant agrees to fully assist the United States in the forfeiture of the
27 | listed assets and to take whatever steps are necessary to pass clear title to the
28 | United States, including but not limited to: surrendering title and executing any

1 documents necessary to effectuate such forfeiture; assisting in bringing any assets located
2 outside the United States within the jurisdiction of the United States; and taking whatever
3 steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed,
4 wasted, hidden, or otherwise made unavailable for forfeiture. Defendant agrees not to file
5 a claim to any of the listed property in any civil forfeiture proceeding, administrative or
6 judicial, which may be initiated.

7 Defendant further agrees to provide a truthful statement regarding all of his
8 assets, and to make a full and complete disclosure of all assets in which Defendant has
9 any interest or over which Defendant exercises control and those which are held or
10 controlled by a nominee(s). Defendant further agrees to submit to a polygraph
11 examination on the issue of assets if it is deemed necessary by the United States.

12 The United States reserves its right to proceed against any remaining assets
13 not identified in this Plea Agreement, including any property in which Defendant has any
14 interest or control, to satisfy the above-listed forfeiture sum.

15 Any proceeds forfeited pursuant to this paragraph shall be applied toward
16 Defendant's restitution obligation.

17 11. Statement of Facts. The parties agree on the following facts in support of
18 Defendant's guilty plea and for purposes of calculating the base offense level of the
19 Sentencing Guidelines. Defendant admits he is guilty of the charged offense.

20 a. From in or about July, 2001, through January, 2002, at Bellevue,
21 Seattle and Bainbridge Island, within the Western District of Washington, and elsewhere,
22 Defendant JAMES N. WUENSCH, together with other persons known and unknown to
23 the United States Attorney, did unlawfully, willfully, and knowingly combine, conspire,
24 confederate and agree among themselves and each other to commit certain offenses
25 against the United States, as set forth below. The objects of the conspiracy were as
26 follows:

27 (1) To unlawfully, knowingly, and willfully, directly and
28 indirectly, by the use of means and instrumentalities of interstate commerce, and of the
29 mails, use and employ, in connection with the purchases and sales of securities,
30 manipulative and deceptive devices and contrivances, by (a) employing devices, schemes,
31 and artifices to defraud; (b) making untrue statements of material facts and omitting to
32 state material facts necessary to make the statements made, in light of the circumstances
33 in which they were made, not misleading; and (c) engaging in acts, practices, and courses
34 of business which operated and would operate as a fraud and deceit upon other persons,
35 in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), and Title 17,
36 Code of Federal Regulations, Section 240.10b-5;

1 (2) To knowingly and willfully transmit and cause to be
2 transmitted by wire communication in interstate and foreign commerce writings, signs,
3 signals, pictures, and sounds in furtherance of a scheme and artifice to defraud and for
obtaining money and property by means of false and fraudulent pretenses,
representations, and promises, in violation of Title 18, United States Code, Section 1343;

4 (3) To knowingly and willfully use and cause the United States
5 mail and interstate couriers to be used in furtherance and execution of a scheme and
6 artifice to defraud investors in HMC, Project X, Znetix, Cascade Pointe, and affiliated
7 entities, and a scheme and artifice for obtaining money and property of said investors by
8 means of false and fraudulent pretenses, representations and promises, in violation of
9 Title 18, United States Code, Section 1341;

10 (4) To conduct and attempt to conduct financial transactions
11 affecting interstate commerce involving the proceeds of specified unlawful activity (mail
12 fraud, wire fraud, and securities fraud), knowing that the property involved in the
13 financial transactions represented the proceeds of some form of unlawful activity, and
14 knowing that the transactions were designed in whole and in part to conceal or disguise
15 the nature, the location, the source, the ownership, and the control of the proceeds of
16 specified unlawful activity, in violation of Title 18, United States Code, Section
17 1956(a)(1)(B)(i);

18 (5) To transport, transmit, and transfer, and attempt to transport,
19 transmit, and transfer, monetary instruments and funds from places in the United States to
20 and through places outside the United States, and to places in the United States from and
21 through places outside the United States, knowing that the monetary instruments and
22 funds involved in the transportations, transmissions, and transfers represented the
23 proceeds of some form of unlawful activity and knowing that such transportations,
24 transmissions, and transfers were designed in whole or in part to conceal or disguise the
25 nature, the location, the source, the ownership, and the control of the proceeds of
26 specified unlawful activity, in violation of Title 18, United States Code, Section
1956(a)(2)(B)(i); and

27 (6) To knowingly and willfully engage and attempt to engage
28 monetary transactions by, through, or to financial institutions, which monetary
transactions affected interstate and foreign commerce, in criminally derived property of a
value greater than \$10,000, such property having been derived from specified unlawful
activities, that is mail fraud, wire fraud, and securities fraud, in violation of Title 18,
United States Code, Section 1957.

29 b. According to public records, HMC was incorporated in Washington
30 State on May 12, 1995, and was administratively dissolved and reinstated at various times
31 throughout the period from on or about December 6, 1995, through on or about
32 October 30, 2000. The Articles of Incorporation filed May 12, 1995, provided that the
33 corporate purposes of HMC were "[t]o operate health and exercise clubs, and related
34 facilities" and "[t]o engage in any business, trade or activity which may be conducted
35 lawfully by a corporation organized under the Washington State Business Corporation
36 Act." On or about December 26, 2001, HMC ceased to exist as a Washington State
37 corporation and merged with a Delaware corporation known as HMC Acquisition Corp.,
38 a wholly-owned subsidiary of Znetix, Inc. Also on or about December 26, 2001, HMC
Acquisition Corp. changed its name to Health Maintenance Centers, Inc.

39 c. According to public records, Project X, Inc., was incorporated in the
40 State of Washington on November 3, 1999. On October 3, 2000, Project X filed Articles
41 of Amendment with the Washington State Secretary of State changing its name to Znetix,

1 Inc. On or about September 25, 2001, Znetix, Inc., ceased to exist as a Washington State
2 corporation and merged with a Delaware corporation known as Znetix, Inc.

3 d. From in or about 1995 through in or about January 2002, HMC,
4 Project X, and Znetix, and affiliated entities, through various sales agents, solicited and
5 received in excess of \$50 million from investors. At no time were the offers and sales of
6 securities issued by HMC, Project X, Znetix, and affiliated entities registered with the
7 United States Securities and Exchange Commission, the State of Washington Department
8 of Financial Institutions, Securities Division, or with the securities regulatory authority in
9 any other state. One of the key misrepresentations made by HMC to investors was that
10 investors who purchased the securities of HMC for one dollar per share would receive
11 four shares of Znetix for each share of HMC at the point when Znetix purchased or
12 merged with HMC.

13 e. In or about August, 2000, the State of Washington Department of
14 Financial Institutions, Securities Division (the "DFI") began an investigation of HMC and
15 affiliated entities and individuals. On April 9, 2001, the State of Washington Department
16 of Financial Institutions, Securities Division, issued a Summary Order to Cease and
17 Desist against HMC and Kevin L. Lawrence, the founder and principal officer of HMC.
18 The Cease and Desist Order, among other things, barred HMC (including its employees,
19 officers and directors) and Lawrence and from selling securities through fraudulent
20 representations and material omissions, or in violation of the State of Washington's
21 securities registration laws.

22 f. Cascade Pointe LLC was a limited liability company formed in
23 Washington State on or about May 2, 2001; Cascade Pointe of Arizona LLC was a
24 limited liability company formed in Arizona in or about July 2001; and Cascade Pointe of
25 Nevis LLC was a limited liability company established in the Carribean nation of Nevis
26 on or about July 26, 2001 (collectively "Cascade Pointe"). From in or about May 2, 2001,
27 through in or about January 2002, Cascade Pointe, through various sales agents, solicited
28 and received in excess of \$12 million from investors. At no time were the offers and
sales of securities issued by Cascade Pointe and affiliated entities registered with the
United States Securities and Exchange Commission, the State of Washington Department
of Financial Institutions, Securities Division, or with the securities regulatory authority in
any other state.

g. On or about June 21, 2001, Kevin L. Lawrence directed that Clifford
Baird should be the new Manager of Cascade Pointe. On or about that date, Baird hired
Defendant JAMES N. WUENSCHKE to be the Acting Controller of Cascade Pointe.
Defendant, through his company J. Wuensche & Co. LLP, entered into a Consulting
Agreement with Cascade Pointe effective June 21, 2001. The Consulting Agreement
provided that Defendant would: maintain Cascade Pointe's accounts, ledgers, and records
"in preparation for an outside audit"; "Interview, recommend and supervise activities of
outside audit firm"; and "Serve as Acting Controller and banking signatory for" Cascade
Pointe. Defendant became a signatory on the Cascade Pointe bank accounts on June 21,
2001. At no time did Cascade Pointe hire any outside auditors as contemplated by the
Consulting Agreement, and no outside audit was ever conducted.

h. Investors in Cascade Pointe were provided with a Private Placement
Memorandum ("PPM") that purported to set forth material information regarding Cascade
Pointe and its business plan. The PPM provided to investors during the time that the
Defendant was associated with Cascade Pointe included a section entitled "Use of
Proceeds," which purported to disclose to investors the use of their funds by Cascade
Pointe. The Use of Proceeds section stated, among other things, that Cascade Pointe
would use approximately \$800,000 for "Offering Expenses," which included "legal,
accounting, consulting and management fees." The PPM's Use of Proceeds section also

1 provided that up to \$850,000 could be used for "Investment Acquisition Expense," a term
2 that was not further defined. During the period from June 21, 2001, through January 23,
3 2002, when Defendant JAMES N. WUENSCHÉ was a signer on the Cascade Pointe bank
4 accounts, the Defendant disbursed funds from the Cascade Pointe bank accounts to
5 various individuals and entities affiliated with Cascade Pointe, and for other purposes that
6 fell within the category of "Offering Expenses," substantially in excess of the amount
7 disclosed in the PPM to be used for "Offering Expenses." Such excess was greater than
8 \$400,000 but less than \$1,000,000. The Defendant received \$442,995.98 during this
9 period, all of which constituted "Offering Expenses."

10 i. In or about July, 2001, Defendant JAMES N. WUENSCHÉ
11 established a company on the Caribbean island of Nevis called Alliance Advisory Group,
12 Inc. At all material times, Defendant had control of the activities of Alliance Advisory
13 Group. On or about July 27, 2001, Defendant caused Alliance Advisory Group to enter
14 into a Consulting Agreement with Cascade Pointe. Under the terms of the Consulting
15 Agreement, Alliance Advisory Group was to provide "strategic planning services" and
16 "international marketing advice" to Cascade Pointe. Alliance Advisory Group and the
17 Defendant did not provide such services to Cascade Pointe to any significant extent.
18 During the period June 22, 2001, through January 23, 2002, Defendant sent \$155,000 (out
19 of the total of \$442,995.98 that he received) of Cascade Pointe funds to an offshore bank
20 account in the name of Alliance Advisory Group. The remaining \$287,995.98 that
21 Defendant received was paid to him as reimbursement of expenses or under the
22 consulting agreement between Cascade Pointe and J. Wuensché & Co.

23 j. Defendant JAMES N. WUENSCHÉ and his coconspirators
24 committed a number of overt acts in furtherance of the conspiracy, including the
25 following:

26 (1) On or about July 27, 2001, Defendant JAMES N.
27 WUENSCHÉ caused Alliance Advisory Group to enter into a Consulting Agreement with
28 Cascade Pointe.

(2) On or about August 3, 2001, Defendant JAMES N.
WUENSCHÉ wired \$30,000 from a Cascade Pointe account to an account in Nevis under
the name of Alliance Advisory Group.

(3) On or about August 6, 2001, Defendant JAMES N.
WUENSCHÉ sent a letter to Martin Cordell, a Securities Examiner with the DFI, that
responded to the DFI's inquiry regarding Cascade Pointe and its relationship to HMC.

(4) On or about September 18, 2001, Defendant JAMES N.
WUENSCHÉ wired \$25,000 from a Cascade Pointe account to an account in Nevis under
the name of Alliance Advisory Group.

(5) On or about September 21, 2001, Defendant JAMES N.
WUENSCHÉ wired \$60,000 from a Cascade Pointe account to an account in Nevis under
the name of Alliance Advisory Group.

(6) On or about September 24, 2001, Defendant JAMES N.
WUENSCHÉ wired \$40,000 from a Cascade Pointe account to an account in Nevis under
the name of Alliance Advisory Group.

(7) On or about October 2, 2001, Defendant JAMES N.
WUENSCHÉ wired \$30,000 from a Cascade Pointe account to an account in Nevis under
the name of Alliance Advisory Group.

1 12. Cooperation.

2 a. Defendant shall cooperate completely and truthfully with law
3 enforcement authorities in the investigation and prosecution of other individuals involved
4 in criminal activity. Defendant shall also cooperate fully and completely with the
5 Receiver appointed by the Court in United States v. Health Maintenance Centers, Inc., et
6 al., C02-153P (W.D.Wa.). Such cooperation shall include, but not be limited to,
7 complete and truthful statements to law enforcement officers and to the Receiver, as well
8 as complete and truthful testimony, if called as a witness before a grand jury, or at any
9 state or federal trial, retrial, or other judicial proceedings. Defendant acknowledges that
10 this obligation to cooperate shall continue after Defendant has entered guilty pleas and
11 sentence has been imposed, no matter what sentence Defendant receives; Defendant's
12 failure to do so may constitute a breach of this Plea Agreement.

13 b. Defendant understands that the United States will tolerate no
14 deception from him. If, in the estimation of the United States Attorney, information or
15 testimony provided from the date of the Plea Agreement, proves to be untruthful or
16 incomplete in any way, regardless of whether the untruthfulness helps or hurts the United
17 States' case, the United States Attorney for the Western District of Washington may
18 consider that Defendant has breached this Plea Agreement.

19 c. The United States Attorney's Office for the Western District of
20 Washington, in turn, agrees not to prosecute Defendant for any other offenses, other than
21 crimes of violence, that Defendant may have committed in the Western District of
22 Washington prior to the date of this Agreement about which: (1) the United States
23 presently possesses information; or (2) Defendant provides information pursuant to this
24 Agreement to cooperate with the authorities.

25 d. The parties agree that information provided by Defendant in
26 connection with this Plea Agreement shall not be used to determine Defendant's sentence,
27 except to the extent permitted by U.S.S.G. § 1B1.8.
28

1 e. In exchange for Defendant's cooperation, as described above, and
2 conditioned upon Defendant's fulfillment of all conditions of this Plea Agreement, the
3 United States Attorney agrees to consider filing a motion, pursuant to U.S.S.G. § 5K1.1,
4 permitting the Court to sentence Defendant to less than the otherwise applicable
5 Sentencing Guideline range.

6 f. Defendant agrees that his sentencing date may be delayed based on
7 the United States' need for his continued cooperation, and agrees not to object to any
8 continuances of his sentencing date sought by the United States.

9 13. Acceptance of Responsibility. The United States acknowledges that if
10 Defendant qualifies for the two-point acceptance of responsibility adjustment pursuant to
11 U.S.S.G. § 3E1.1(a), and if the offense level is sixteen (16) or greater, Defendant's total
12 offense level should be decreased by an additional one (1) level pursuant to U.S.S.G. §
13 3E1.1(b), because Defendant has assisted the United States by timely notifying the
14 authorities of his intention to plead guilty, thereby permitting the United States to avoid
15 preparing for trial and permitting the Court to allocate its resources efficiently.

16 14. Non-Prosecution of Additional Offenses. If Defendant complies fully with
17 this Plea Agreement, the United States Attorney's Office for the Western District of
18 Washington agrees not to prosecute Defendant for any additional offenses known to it as
19 of the time of this Agreement that are based upon evidence in its possession at this time,
20 or that arise out of the conduct giving rise to this investigation. In this regard, Defendant
21 recognizes that the United States has agreed not to prosecute all of the criminal charges
22 that the evidence establishes were committed by Defendant solely because of the
23 promises made by Defendant in this Agreement. Defendant acknowledges and agrees,
24 however, that for purposes of preparing the Presentence Report, the United States
25 Attorney's Office will provide the United States Probation Office with evidence of all
26 relevant conduct committed by Defendant.

27 The agreements stated in this paragraph do not apply to crimes of violence.
28

1 15. Voluntariness of Plea. Defendant acknowledges that he has entered into
2 this Plea Agreement freely and voluntarily, and that no threats or promises, other than the
3 promises contained in this Plea Agreement, were made to induce Defendant to enter these
4 pleas of guilty.

5 16. In the event that this Agreement is not accepted by
6 the Court for any reason, or Defendant has breached any of the terms of this Plea
7 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
8 the Plea Agreement to the later of: (1) 30 days following the date of non-acceptance of
9 the Plea Agreement by the Court; or (2) 30 days following the date on which a breach of
10 the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

11 17. Post-Plea Conduct. Defendant understands that the terms of this Plea
12 Agreement apply only to conduct that occurred prior to the execution of this Agreement.
13 If, after the date of this Agreement, Defendant should engage in conduct that would
14 warrant an increase in Defendant's adjusted offense level or justify an upward departure
15 under the Sentencing Guidelines (examples of which include, but are not limited to:
16 obstruction of justice, failure to appear for a court proceeding, criminal conduct while
17 pending sentencing, and false statements to law enforcement agents, the probation officer
18 or Court), the United States is free under this Agreement to seek a sentencing
19 enhancement or upward departure based on that conduct.

20 18. Completeness of Agreement. The United States and Defendant
21 acknowledge that these terms constitute the entire Plea Agreement between the parties.
22 This Agreement only binds the United States Attorney's Office for the Western District of
23

24 ////

25


26 ////

27


28 ////

1 Washington. It does not bind any other United States Attorney's Office or any other
2 office or agency of the United States, or any state or local prosecutor.

3 DATED: This 10th day of December, 2002.

4
5
6 
JAMES N. WUENSCHÉ
Defendant

7
8 
ELLEN BASS
Attorney for Defendant

9
10
11 
JEFFREY B. COOPERSMITH
Assistant United States Attorney